

Remarks

Previously pending claims 1-6 are cancelled herein without prejudice, and replaced by new claims 7-12. It is believed that the new claims overcome all the rejections raised in the outstanding office action, as explained below.

I. The first issue addressed herein is the rejection under 35 U.S.C. 112, second paragraph.

A. The objection to Claims 4 and 5, pertaining to indefiniteness because of the phrase "can be", is overcome by the elimination of said quoted phrase and the related indefinite concept in all the replacement claims 7-12.

B. The objection to Claim 4 beginning on the third line from the bottom of page 3 of the Office Action, regarding the text "the higher (second and above) greater than the first harmonic" was intended to mean "the second or higher harmonic that is greater than the first harmonic". The remainder of the claim was intended to mean that a patient is considered as having vasoconstriction as a cause of hypotension, if said patient is confirmed to have a second or higher harmonic greater than the first harmonic.

Accordingly, new Claims 9-12 are believed to resolve the above-mentioned indefiniteness question raised in connection with the original and now cancelled Claims 4 and 5.

C. The objection to claims 5 and 6 on page 4 of the Office Action is noted and believed to be moot, because these claims are cancelled and replaced by new claims which do not have the objectionable features or limitation. In particular, new independent claims 7 and 10 include as a first step and limitation, "measuring the arterial waveforms from a peripheral artery."

The Examiner has commented on page 4, first paragraph, lines 10-12 about "determining if an individual is hypotensive." The present invention is a method pertaining to a patient, (already diagnosed as hypotensive), for

determining whether said hypotension is due to vasodilation or is associated with compensatory vasoconstriction. In view of this clarification, it is urged that the Examiner's provisional decision that "claims 4-6 will not be considered in this Office Action" (stated on lines 11-12 of page 4 of the office action) be reconsidered and withdrawn. Applicant believes said provisional decision was based on a misunderstanding of the invention caused by certain claims language which has now been omitted.

II. The second issue addressed herein is the rejection under 35 U.S.C. 102 (b) where Claims 1-6 were rejected as anticipated by the O'Rourke reference.

It is respectfully submitted that this reference does not anticipate or render obvious any of current Claims 7-12 (or cancelled Claims 1-6) as follows.

The O'Rourke reference discloses a method for ascertaining the contour of the pressure pulse in the central arteries from the contour of the pressure pulse in the peripheral arteries. This reference derives the inverse of the Fourier transform associated with the aortic pressure pulse to produce a time-domain representation of ascending aortic pressure pulse.

In distinct contrast to the O'Rourke reference, the present invention is directed to a method for providing a diagnosis as to whether hypotension in a patient (or in any patient) is due to vasodilation or is associated with compensatory vasoconstriction, which includes the step of measuring the arterial waveforms, subjecting them to harmonic analysis and comparing the moduli of the harmonic components to provide the basis for the diagnosis.

The Office Action in Paragraph No. 4 on pages 4-5 refers to teaching in the O'Rourke reference for measuring the arterial pressure waveform invasively or non-invasively from a peripheral artery. However, as noted above, this prior art reference does not disclose or suggest the method for diagnosis defined in the current claims, and does not disclose or suggest the steps of said method or

object of said method.

It is respectfully submitted that the steps of the new method are new and non-obvious.

III. A third issue noted on page 2 of the outstanding Office Action concerns a defective oath or declaration. An executed declaration and power of attorney form is enclosed.

In view of the significant distinctions between the present invention defined in the present claims and the cited prior art, reconsideration and favorable action is respectfully requested.

Respectfully submitted,

By: \_\_\_\_\_

  
J. David Dainow

Reg. No. 22,959

666 Third Avenue, 10<sup>th</sup> Floor

New York, NY 10016

Tel.: 212-949-9022

Fax: 212-949-9190

E-mail: [jdainow@lawabel.com](mailto:jdainow@lawabel.com)